IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA, 1928

WP(C).No. 32803 of 2004(E)

AGAINST THE ORDER IN IA 2204 2001 IN
OS.193/1996 of PRL.S.C.,THALASSERY

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PETITIONER:

AZHEEKAL MATHAI S/O. CHACKO,
AGED 55, VAZHAPPARAMBIL, THALAKKANY, KOTTIYOOR
AMSOM DESOM, THALASSERY TALUK.

BY ADV. SRI.J.S.AJITHKUMAR
SRI.JINO ANTONY

RESPONDENTS:

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1. AZHEEKAL THOMAS S/O. CHACKO,
VAZHAPARAMBIL, THALAKKANY, KOTTIYOOR AMSOM DESOM,
THALASSERY TALUK.

* 2. AZHEEKAL KURIEN S/O. CHACKO,
VAZHAPARAMBIL, THALAKKANY, KOTTIYOOR,
AMSOM DESOM, THALASSERY TALUK. (DELETED)

* RESPONDENT NO.2 DELETED FROM PARTY ARRAY AT THE RISK OF PETITIONER AS PER ORDER DATED 2.2.06 IN W.P.(C)

BY ADV. SRI.K.SIVAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBTIS

EXT.P1: TRUE PHOTOCOPY OF REPORT OF COMMISSIONER DATED 7.6.01 IN I.A. 2202/01 IN I.A.1715/00 IN O.S. 193/06.

EXT.P2: TRUE COPY OF OBJECTION DATED 19.7.01 TO COMMISSION REPORT DATED 7.6.01.

EXT.P3: TRUE COPY OF ORDER DATED 24.5.01 OF SUB COURT, THALASSERY IN I.A.2202/01 IN I.A.1715/2000 IN O.S.193/96.

EXT.P4: TRUE COPY OF DEPOSITION OF COMMISSIONER IN IA1715/00 IN O/.S.193/96.

EXT.P5: TRUE COPY OF SKETCH OF PLAINT SCHEDULE PROPERTY ON THE FILE OF TAHASILDAR, THALASSERY.

EXT.P6: TRUE COPY OF CERTIFICATE ISSUED BY AGRICULTURE OFFICER, KOTTIYOOR.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.32803 OF 2004

DATED THIS THE 2nd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the defendant in O.S.193/1996 and respondent is the plaintiff. I.A.1715/2000 was filed for passing a final decree in accordance with the preliminary decree. A commissioner was appointed to divide the properties in accordance with the preliminary decree. Commissioner submitted a report and plan. Petitioner filed I.A.2202/01, to set aside the report contending that Commissioner has not properly identified the property and therefore the report, plan and share list are to be set aside. Under Ext.P3 order, learned Sub Judge remitted the report back to the Commissioner to submit a further report, after further inspection and measurement with the assistance of Taluk Surveyor. This petition is filed challenging that order.

2. Learned Counsel appearing for petitioner and respondent were heard.

3. Arguments of learned Counsel appearing for petitioner was that under Ext.P3 order, learned Sub Judge only directed the Commissioner to make corrections in the survey number and the property was not properly identified by the Commissioner and in such

circumstances, the order is to be quashed.

4. On hearing learned Counsel appearing for petitioner, I do not find no reasonable cause for the apprehension expressed by petitioner. As per Ext.P3 order, learned Sub Judge directed the Commissioner to visit the property once again. Commissioner was directed to measure the property with the assistance of Taluk Surveyor. It implies that the Commissioner has to identify the property with the assistance of Taluk Surveyor and to prepare the plan and report thereafter. If there is any mistake, as canvassed by petitioner, it could be verified by the Commissioner at the time of inspection.

This petition is disposed directing the Commissioner to identify the property with the assistance of Taluk Surveyor and submit the report and plan only thereafter.

M.SASIDHARAN NAMBIAR,JUDGE

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